

MINUTES
ADVISORY COMMITTEE

Wednesday, September 3, 2014
City Hall, Committee Chambers Room 207
5:00 p.m.

Members Present: Ald. Tom DeWane, Ald. Mark Steuer, Ald. Jerry Wiezbiskie, Ald. Andy Nicholson, Ald. Guy Zima (arrive late), Ald. Chris Wery, and Ald. Brian Danzinger (arrived late)

Others Present: Mayor Jim Schmitt, Asst. City Attorney Jim Mueller, Chief of Staff Andy Rosendahl, Economic Development Director, Greg Flisram, Ald. Tim DeWane, Ald. Dave Nennig, Members of Media

1. Call to order.

The meeting was called to order by Council President, Tom DeWane at 5:00 pm. All members were present with the exception of Ald. Guy Zima and Ald. Danzinger whom would be arriving late.

2. Approval of the agenda.

Motion and second were made to approve the agenda. Motion carried.

3. Review with possible action: Ordinances 2.01(2) Council meetings, special meetings and 2.06(14) Rules of Council Procedure, committee of the whole.

Ald. DeWane stated Ald. Wery brought this forward so he will start with him.

Ald. Wery states he has for informational purposes, copies of what the ordinances are. He states that ordinance 2.01(2) reads that the mayor can call a special meeting by written notice to each member of the council at least 6 hrs before the time of the meeting. Otherwise the other option is 1/3 of the members of the council can call a special meeting by signing a petition. He states there was talk some years ago about adding council president and asked if they'd like to discuss that. The other one is rules of council procedure for committee of the whole. The mayor may declare the entire council a committee of the whole and the council president can also have a committee of the whole. Ald. Wery states he is just looking for their input on it and that some of the new members may not know that four members of the committee can call a special meeting.

Ald. DeWane states that the question he has is, do the four alders have to be on the same committee or can it be any four? Does it specify?

Ald. Wery states that no, that it's any four. He further states that he's just raising awareness about this and if they wanted to add council president to either of these.

Ald. Nicholson states that there has to be a reason this was being brought forward and asked if there were examples and why this was brought on.

Ald. Wery states he's always looking for ways to get the council more ability to monitor and to have their own meetings. He thought this was worth looking at.

Ald. Nicholson asks if this is something only one alder could bring forward or if they do this at council or just talks to them or Ald. DeWane.

Ald. DeWane states that what he believes Ald. Wery is looking for is if the mayor is out of town or unavailable and something comes up, they could meet. If something they really wanted to look at comes up, as council president, they could meet and he does not have a problem with that.

Ald. Wery stated that they could look at it two ways. One, they elected a council president for a reason like this and they expect them to have good judgment. On the other hand do they want a council president who is calling special meetings all the time, maybe in some war with the mayor. They wouldn't want that situation but they should, as a body have their leader to have the ability to perhaps call a special meeting. He didn't know what everyone else's views were on it.

Ald. Zima states as it is now, the mayor or 4 members of the council can call a special meeting

Ald. DeWane states it has been like this for a while. Ald. Wiezbiskie asks Atty Mueller who responds with "yes". Ald. Wiezbiskie states that's good, he just wants to make sure from their attorney. He states he doesn't like the idea that they can deliver a notice 6 hrs before the meeting. Whether you or home or not, they can call a meeting and conduct business while you are out of town. He doesn't like that part. He thinks there should be at least 24 hr notice. If they are going to be transparent and open to the public they need to be able to give notice to the public, this is way too liberal. He doesn't think the council should be able to call a special meeting without the mayor anyway unless it was an emergency. He feels there should at least be a majority and they should look at what

makes a majority. We have to have 8 to have a quorum. He thinks 7 should be a quorum. There should at least be that many to have a special meeting.

Ald. Steuer States that he is a firm believer that if it isn't broken, why try to fix it. Where did this come from? Is this abnormal from any other city council? More city councils in the US must be having these meetings and normally when you change something you change it for the better. Perhaps someone else has a better way and could follow their example. He states this might require some homework. There is a reason it's the way it is and he thought Ald. Zima would know since he's been there longer than anybody else.

Ald. Zima states that at the county level they don't get a special meeting with just 1/3 members, they have to have over one half signing a petition. Same with a committee meeting. He has no problem with council members wanting special meetings. He's willing to go with what the majority decides but four is not enough. Needs to be half. He feels notice should be 3 or 4 days and an emergency could be 24 hrs.

Ald. DeWane requests that they stay on subject.

Ald. DeWane announces that Ald. Danzinger has arrived.

Ald. Steuer agrees with Zima that they should have a larger number to have the meeting. Possibly be more consistent with having eight to be able to have special meetings. He is unsure and doesn't have an opinion on the issue of emergency meetings but would like more than 24 hr notice for meetings.

Ald. Wiezbiskie would be okay with a requirement of seven council members for special meetings and be able to define an emergency.

Motion made on 2.01(2) by Ald. Zima for the Advisory Committee to review and hold until next meeting. Seconded by Ald. Wery.

Motion carried.

Ald. DeWane asks for a motion on 2.06(14) Rules of Council procedures, committee of the whole.

Ald. Zima feels there should be some approval by the majority of the council. Not just a decision by the Mayor.

Ald. Danzinger wants clarification from legal regarding who can declare a committee of the whole such as who can call the committee of the whole. Atty Mueller clarifies. Ald. Danzinger states that answers his questions.

Atty Mueller states that right now the ordinance states that the Mayor can call the committee of the whole. There are different rules, the majority or 2/3rd can call a committee of the whole but does not count for open meetings.

Motion made on 2.06(14) by Ald. Wery to hold along with the previous item until next meeting. Seconded by Ald. Wiezbiski.

Motion carried.

Ald. DeWane states we are now on number 4, review the status of Schauer and Schumacher building.

Ald. Nicholson thought it was reviewed to finance but they could review it.

Greg Flisram states that the property has been shown and the city is in discussion with developers and possible tenant. This property has been shown to 26 or 27 developers from as far away as Milwaukee and Madison. The state tax credit issue has caused some issues. The people the city is currently talking to are looking at ways to finance the property and have spoken as recently as that day. We previously had a signed development agreement but that developer's financing fell through.

Ald. Wiezbiskie asked why it was brought to advisory and not straight to finance committee.

Ald. Zima asks for an inventory of all city owned properties.

G. Flisram states that is available.

Ald. Steuer asks G. Flisram what the assessed value of the property is. Greg states around \$600k. Ald. Steuer asks about the conditions of the building, parking issues and safety.

G. Flisram states the building is structurally sound but it does have some issues. Would like to get it developed to deter the possibility of people breaking in and vandalizing.

Ald. DeWane asks G. Flisram what percentage he believes the building is structurally sound. G. Flisram states 70%, it's a masonry building.

Motion requested by Ald. Wery to refer to finance committee. Seconded by Ald. Wiezbiskie.

Ald. DeWane states they are on number 5, asking the opinion of the League of Municipalities for legal representation for the City Council.

Ald. Nicholson states the reason he brought this up is over the past 13 yrs he's been in office where the city council could have their own legal representation and he feels they should review this, ask legal questions if they want to pursue this. Such as an opinion from the League of Municipalities, how much this is going to cost, and basically every question they have for this. He thinks it's important for them to have their own attorney because he feels they are at the mercy of one attorney. He states the county board has their own attorney and they should too. Not the city attorney because he is represented by the Mayor. He'd like to hear everybody's opinion on this.

Ald. DeWane remembers about a year and half ago at council it was brought up and that former Ald. Brunette asked former City Atty Wachewicz if he represented the Mayor or the City Council. They argued about it for a while and he believes there was a little bit of concern there. He thinks they need to study this a little bit further and that when they are leaning away from legal it's not that they are being disrespectful. It's that they don't know if they are being represented since the legal department is in the Mayor's office. There are some gray areas that need to be clarified.

Ald. Wiezbiskie states that he believes the League of Municipalities is available to them to call and are just a phone call away. Atty Mueller concurs.

Ald. Zima asks Ald. Nicholson if what he is asking is if they council has the right to ask the League of Municipalities if the council has the right to their own legal counsel.

Ald. Nicholson asks if the council wants their own legal representation and tells Ald. Wiezbiskie that yes, they can call them but can't during a heated debate during council meetings for a legal question. Ald. Nicholson proceeds to give a couple of examples to why he believes that the council members should have their own legal representation. Specifically a situation where the mayor wanted to close a fire station to balance the budget. Another situation was regarding dismissing the Protection and Welfare committee over a tavern and not going to have a hearing. He wants to ask the League of Municipalities if they can proceed to get their own legal representation like the county board. It can be contracted out it doesn't have to be a table of organization.

Ald. Zima states he's no lawyer but believes they can do whatever they want to as long as the majority agrees to it. He states theoretically the city attorney represents the mayor and the common council. But says he used the word theoretically but they all know that in practice the city attorney basically serves at the pleasure of the mayor and his other staff members and rarely if ever the staff members present something contrary to what the boss wants. He further states that in millions and millions of court cases out there that both sides are usually represented on their own. You operate on precedents to make determinations in court cases. Even all of that is probably imperfect. He is in favor of what Ald. Nicholson is requesting. He believes there is a basic conflict of interest in the city attorney trying to serve two masters. He believes a lot of the opinions that have come down are pretty flaky but that maybe too harsh of words. That there's absence of thought at times and he has seen him persuade people to change their minds just in the course of discussion. If they want their own representation than as a body they need to decide that. That the council or chairman can have them present at any time to balance off whatever is being said by the administration. He supports the idea of the council members having their own representation.

Ald. Steuer states that if this is the case that this came forward its one or the other. They can't have both. They can't have representation here as well as another attorney. He wonders if that would cause some issues.

Ald. Zima states it would empower the council that if they had doubts about a situation they can get a second opinion on the spur of the moment and not wait for the League of Municipalities to run the meetings and that's not what they are there for.

Ald. Steuer states that maybe there are some merits to looking into this. He then asks Atty Mueller if he was at the council meeting a year and half ago (the one Ald. Nicholson gave an example of).

Atty Mueller states that he doesn't believe he was and that the city attorney serves the city of Green Bay, the staff, alderpersons and the mayor. Essentially the city attorney has 13 bosses and all the bosses are not always going to agree on everything. If they are going to ask the League about hiring their own attorney they also need to ask about insurance coverage. If it's not approved by the insurance company, how do they plan to pay for this? Where it comes from in the budget? Also, attorney/client relationship. He is not trying to discourage them but what happens if they all don't agree on a topic? Then who is their attorney? You may have the attorney giving an opinion a certain council member doesn't like just as their stating with administration and council. It's never a perfect system. He has no problem with the council exploring their options.

Ald. Steuer states he knows the county does this but are there any cities?

Atty Mueller states we would be the first in the state of Wisconsin.

Ald. Wery agrees that they should look at this. He goes back to the Younkers building and when the city condemned the lease. And states that previous attorneys and city attorney spoke off the record that they do have 13 bosses but who they really see every day is the mayor. In that their opinion can sometimes be swayed and pulled by someone you see every day. He called the League when this happened and was told nobody in the state did this but nothing would disallow it. There is no reason they can't do it just because nobody else is doing it. He asked why it takes so long for the League to respond to a question and was told it depends on how far down on their priority list they are. Could take years to hear from them. They might give you a verbal opinion for what it's worth but to get a written opinion it depends on where you fall on their list of priorities or what they want to do that week. He thinks there is no reason they couldn't just do it and it's something worth looking at.

Ald. Zima states that this is a practical matter. If they have a contract with an attorney of your choice for 20, 30 or 40 thousand a year or whatever they thought was appropriate, they would be at the pleasure of the president of the council and the council and its committee members. Just the fact that they'd have that they would have more honest opinions coming out of the city attorney's office. Because they will know if they try to slide around in the gray area someone is going to call them on it. He watched it for 4 yrs over at the county and that the administration over there didn't like it that there was someone there to look over their shoulders. They were rarely in conflict. At times they would debate and they usually resolved it between them. They should have their own attorney because he believes it will keep the administration more honest. It's up to them. Do they want this help? If they do, then they should establish it. Ald. Wery has a verbal so they can do whatever they want as long as they are not breaking the law. He believes they are a bunch of part time people with nobody working for them because the staff works for the administration. He likes having a bigger council but they are down to 12 now. He's in favor of it and if they want this help they should establish it.

Ald. Nicholson asks Atty Mueller about why they need to ask about benefits and insurance if they would be contracting their own attorney.

Atty Mueller states that the insurance covers the public officials and if their own attorney tells them what to do and it's the wrong advice, they are kind of putting the insurance company on the hook. They need to look into if they will need to get their own insurance.

Ald. Nicholson states that the feedback at the county level was that everything ran even, there was no funny business like Ald. Zima was stating. They had two very professional attorneys, they did their job and nobody could pull the wool over anybody. Basically, it ran very smoothly, two opinions that is all it was. Then the county board was able to decide on their own. But it's fair to have two opinions and not just one because don't they want the city council/legislative branch a little stronger? He does because they are on the frontlines. They take the brunt, not the mayor. He refers to the Younker's deal and how long that took to make a decision and they received a bad opinion on it.

Ald. Steuer asks if they move forward with hiring an attorney do they work through personnel. What would the process be?

Ald. Dan zinger states that based on Wisconsin statute there is two ways to go about this. One, as Mr. Wery and Mr. Zima mentioned, they can simply add a second attorney and their assignment would be determined by HR and the council. The issue with that is where would that attorney report to in the table of organization? Who would they report to? Would it be the president only? It does create a couple of legal questions in terms of how opinions are presented but from a pure staffing standpoint, yes they do have the ability to add anybody they want to their organization. The second would be hiring at a contract basis which is what he believes Mr. Nicholson was alluding to and like any contract, they can engage with any third party like they do with outside legal counsel for real estate deals and things like that. It would fall under that sort of category. The issue is that they don't have a procedure for and which is not outlined for anything they have right now from what he's gathered. How would they select that legal representation and how they would enact that legal representation? Like Mr. Nicholson was mentioning, if they wanted to get a secondary opinion from an attorney, because it would be contract based, they would either a) have to presume that there is going to be some opinion conflict at the meeting and simply have them on retainer to attend that meeting. Or the second approach would be if there is a conflict in opinion, they could request to hold that item, consult with their secondary attorney, and then use that opinion on the following meeting. But in all cases those are items that they currently can utilize within their legal rights to do so.

Ald. Steuer asks if they had to ask their secondary attorney would he be on the floor or would it be a closed session type of thing.

Ald. Danzinger states it would be more of a contract issue than an opinion of the council. Like he said, if they presumed there was going to be a conflict, they would request that their secondary attorney be present for the meeting. But if they did have a conflict and

their legal counsel isn't present they would have to hold the item because they would rather have a secondary opinion.

Ald. Zima states he wants to pipe in that he has no problem having their own attorney. One, they would contract out with an attorney of their choosing, and that attorney would sit with the council members in Atty Mueller's seat and that's the process they do at the county. Our city attorney would sit with the other directors. Their attorney would also get the same meetings packets, study them and have an answer for each and every one. As they go along, he would be at every meeting.

Ald. Danzinger states he understand the scenario but his issue with that is based on their table of organization, the city attorney is still the official representation for the city. He was under the understanding that all they were looking for is for a secondary opinion to be available for them. It seems odd that they would be sitting in the role of city attorney.

Ald. Zima states that is because he would be working for them. He would be their council attorney and at their council meeting. He would be representing them during that meeting and if they needed a second opinion from their counsel they would be there.

Ald. Danzinger states he doesn't mind them looking at this because he understands the desire for checks and balances and he thinks that's important to have. What concerns him is from a pure city representation stand point if there is a legal opinion that has to be given they can get it. They can disagree with it and ask for a secondary opinion, but from a pure procedural stand point the city attorney still has not the final say but can say the city attorney's office is taking a certain stance based on what the issue is. They would be able to ask this outside entity for an opinion to help with their decision making but again he doesn't think it necessarily trumps what the city attorney's stance is. The second point is if they have a disagreement or conflict, would the opinion that's being given by the legal staff, he views almost in the same way that they have with the other staff that they have gone against legal opinion and he can think of a few occasions. They have also gone against staff decisions or recommendations as well. He agrees that it is their role. Their role is to ask those questions. They have held decisions for review without having an attorney on retainer and they have requested a second opinion before.

Ald. DeWane states that they have but takes years and years to get another opinion. He says he came in several times and tried to talk to Atty Wachewicz and was told that his hands were tied. That he was always in fear of the Mayor. Sometimes decisions don't want to be brought back. After he got the new job and left it was apparent the power of the Mayor is a lot more than you think when it comes to decisions coming out of that office.

Ald. Zima states they are making it more complicated than it has to be. They can contract for any services they want. They are looking for someone that will guide them and advise them of their rights and responsibilities. That they are not at the mercy of the Mayor's appointees and deciding what they can or cannot do. So he thinks they need to contract someone that can take care of their needs, advises and answers their questions when they have them. They need someone to do research. Everyone on the staff is well paid and well educated but they basically present the point of view of the administration which is the Mayor. They cannot continue to be at the mercy of the well paid staff that serve at beck and call of the Mayor. It's as simple as that. If they want an opinion that is more loyal to them and not going to be influenced by what the administration wants they need their own attorney. They need someone to do research for them when they have doubts.

Ald. Steuer, states he likes Ald. Nicholson speaking that they need a different opinion. He asks if their attorney at the County level was available at all times. Not just during meetings.

Ald. Zima states that the attorney was available for all board members at any time and was at all their meetings.

Ald. Danzinger reminds everyone that the item on the agenda is to ask the opinion of the League of Municipalities. If they are to take action they need to bring it up again.

Ald. Wery makes the motion to send to Personnel and Finance Committee which is meeting the next week. Ald. Zima seconds the motion.

Motion carried

There being no further business, a motion to adjourn was made by Ald. DeWane and seconded by Ald. Danzinger. Motion carried.